Supreme Court, U.S.
FILED

031096 OCT 7 - 2003

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

DONNIE F. SCHROEDER,

Petitioner/Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent/Appellee.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DONNIE F. SCHROEDER
Petitioner In Pro Se
2224 Carbine Court
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IN THE SUPREME COURT OF THE UNITED STATES

DONNIE F. SCHROEDER, Petitioner/Appellant, v. COMMISSIONER OF INTERNAL REVENUE, Respondent/Appellee.	No. _____ Court of Appeal Ninth Circuit No. 02-73929 Tax Court Nos. 7704-99 5443-00

STATEMENT OF QUESTIONS PRESENTED

1. The United States Court of Appeal for the Ninth Circuit failed to address and answer petitioner, Donnie F. Schroeder's questions outlined in his Petition for Rehearing En Banc.

2. The court did not consider the fact that any omitted income was due to the fact that defendant, Commission of

Internal Revenue, failed to properly communicate the requirements of the law.

3. The court failed to consider that under legislation plaintiff was not liable for the tax imposed on the gross income claimed by the defendant.

4. The court overlooked the legislative authority of regulations 6501, 662, 26 U.S.C.

5. The court did not take into consideration that the only filing requirement against the plaintiff is volunteer and not mandated by legislation.

6. The court failed to provide petitioner with an executed copy of the decision and further failed to provide a proof of service of said decision.

7. The court failed to consider petitioner's disability in denying his request for oral argument.

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STATEMENT OF BASIS FOR JURISDICTION

Petitioner, Donnie F. Schroeder, file this Petition for Writ of Certiorari after an Order filed on July 14, 2003 denying petitioner's Petition for Rehearing En Banc.

STATEMENT OF THE CASE

Petitioner filed a United States Individual Income Tax Return (form 1040) for the tax year 1995. That return was filed in late February, 1996, by first-class mail. The return was filed reporting zero income due from petitioner as petitioner had earned only wages during 1995, and had no income to report. Taxes had been paid by petitioner in the approximate amount of $4,700.00, and petitioner requested a refund in this amount.

Petitioner contends that IRS agents have a legal duty to explain the filing requirement(s) alleged by respondent to petitioner, and the IRS code sections relied upon in support of any filing requirement alleged.

Petitioner contacted the IRS frequently to check on the status of his tax refund, yet respondent initially denied ever

receiving petitioner's return concerning tax year 1995. Petitioner accordingly forwarded a second copy of his 1995 tax return in June 1996 by certified mail. The IRS signed for the 1996 letter with enclosed copy of 1995 tax return, but nevertheless refused to acknowledge that petitioner's 1995 return had been received by the IRS. Petitioner then hand-delivered a third copy of his 1995 tax return to the IRS office located on Watt Avenue in Sacramento, California on November 8, 1996.

The IRS once again refused to acknowledge that petitioner's return had been filed, and instead mailed a notice to petitioner claiming that they had not received petitioner's return. Respondent claimed petitioner's return had not been received in letters dated February and March, 1997. On March 11, 1997, petitioner hand-delivered a fourth copy of his return to the IRS office located in Sacramento California.

Once respondent finally acknowledged receipt of petitioner's return, a letter soon followed from Dennis Paiz, Agent for the Board, threatening petitioner with a $500 frivolous

filing penalty under Internal Revenue Service Code section 6702. Petitioner responded with a six-page letter. Dennis Paiz countered by providing the refund initially sought by petitioner.

Nine months later, the IRS sent petitioner an urgent notice claiming they had assessed penalties under IRC section 6702. Petitioner contended at the time, and still contends, that the burden of proof that petitioner even owes the taxes as alleged, lies with respondent, pursuant to IRC section 6703.

In good faith, petitioner attended a Problem Solving Day workshop held at the Internal Revenue Service Center. At the workshop, petitioner was told that his problem could not be solved and that he would have to take respondent to court. Petitioner agreed to do so.

In 1996 the IRS again asked the Court to impose penalties against petitioner, citing IRC section 6651(a)(1), which applies to cases of failure to file a Return (as required under the authority of Sub-chapter A of Chapter 61). Petitioner contended that he has not failed to meet any requirements set forth under

Chapter 61. Respondent has been and continues to be unable to show an IRS code section, for a class of persons of which petitioner is a member, who are subject to the filing requirement claimed by respondent.

Thereafter, on April 27, 1999 petitioner filed a petition with the United States Tax Court disputing the notice of deficiency. The United States Tax Court issued Decisions filed August 29, 2002 imposing a deficiency in income tax due from the petitioner for the taxable year 1996 in the amount of $14,699.70 and $5,479.00 for the taxable year 1995. Subsequently on November 14, 2002 petitioner filed a Notice of Appeal. Following the decision from the Court of Appeal for the Ninth Circuit filed May 20, 2003, affirming the United States Tax Court's decision, petitioner filed a Petitioner for Rehearing En Banc. On July 14, 2003 the United States Court of Appeal for the Ninth Circuit issued an Order denying petitioner's Petition for Rehearing En Banc.

ARGUMENT - REASONS FOR GRANTING WRIT

Petitioner contends that the United States Tax Court and the Court of Appeals for the Ninth Circuit erred when they failed to provide petitioner with an authority mandating petitioner to pay taxes on wages exchanged for labor.

Petitioner further contends that the courts erred in failing to provide petitioner with direct answers to the questions outlined in his Petition for Rehearing En Banc.

Additionally, petitioner believes that his constitutional rights were violated when the courts denied his request for oral argument. Petitioner requested oral argument based on a disability and he strongly feels that this disability was not taken into consideration when deciding to deny his request for oral argument.

Further, petitioner questions the validity of the Order filed July 14, 2003 and the Decision filed and entered on May 20, 2003. Petitioner contends that neither the Order or Decision can be valid without being properly executed by the presiding

judges. Furthermore, the Decision (entered on May 20, 2003) was sent under a cover letter stating that the enclosed was a certified copy of the Decree of the Court, but the Decision does not indicate any such certification.

CONCLUSION

Petitioner contends that for the reasons stated herein that the court should grant petitioner's Writ of Certiorari.

Dated:

Respectfully submitted,

_____

DONNIE F. SCHROEDER
PETITIONER PRO SE

FILED: July 14, 2003
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DONNIE F. SCHROEDER, Petitioner-Appellant, v. COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee.	No. 02-73929 Tax Ct. Nos. 7704-99 5443-00 Nevada (Reno) ORDER

Before: PREGERSON, REINHARDT, and GRABER, Circuit Judges.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed.R. App.P.35.

The petition for hearing en banc is denied.

No further filings will be accepted in this closed appeal.

FILED: May 20, 2003
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DONNIE F. SCHROEDER, Petitioner-Appellant, v. COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee.	No. 02-73929 Tax Ct. Nos. 7704-99 5443-00 MEMORANDUM*

Appeal from a decision of the United States Tax Court

Submitted May 12, 2003**

Before: PREGERSON, REINHARDT, and GRABER, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36.3.

** Because the panel unanimously finds this case suitable for decision without oral argument, Schroeder's request for oral argument is denied *See* Fed.R.App.P.34(a)(2).

Donnie F. Schroeder appeals pro se a decision of the tax court sustaining the Commissioner of Internal Revenue's ("Commissioner") determination of federal income tax and penalties due for 1995 and 1996. We have jurisdiction pursuant to 26 U.S.C. § 7482(a). We review de novo the tax court's conclusions of law, and review for clear error to its findings of fact. *Baizer v. Comm'r,* 204 F.3d 1231, 1233-34 (9th Cir.2000). We affirm.

The tax court did not err by finding the Commissioner's notice of deficiency for tax year 1995 timely. *See* 26 U.S.C. § 6501(e)(1)(A) (permitting assessment within 6 years where taxpayer omits more than 25 percent of gross income from the return).

The tax court did not err by finding Schroeder's wages to be taxable income. *See Maisano v. United States*, 908 F.2d 408, 409 (9th Cir. 1990) (per curiam).

The record reports the tax court's assessment of penalties pursuant to 26 U.S.C. § 6662(a). *See Custom*

Chrome, Inc. v. Comm'r, 217 F.3d 1117, 1127-28 (9th Cir. 2000).

Schroeder's remaining contentions are unpersuasive.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 02-73929
CT/AG#: 7704-5443-00

DONNIE F. SCHROEDER

Petitioner - Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent - Appellee

Upon Petition to Review a Decision of Commissioner of Internal Revenue.

THIS CAUSE came on to be heard on the Transcript of the Record from the Commissioner of Internal Revenue and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here

ordered and adjudged by this Court, that the Decision of the said agency in this cause be, and hereby is Affirmed.

Filed and entered 05/20/03.

(2)

Supreme Court, U.S.
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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

DONNIE F. SCHROEDER,

Petitioner/Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent/Appellee.

ON PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE NINTH

CIRCUIT

SUPPLEMENTAL APPENDIX

OPINION OF UNITED STATES TAX COURT FILED

AUGUST 22, 2002

DONNIE F. SCHROEDER
Petitioner In Pro Se
2224 Carbine Court
Elverta, CA 95626
(916) 224-9325

UNITED STATES TAX COURT

Washington, DC 20217

DONNIE F. SCHROEDER, Petitioner	)	Docket No. 7704-99
v.	)	
COMMISSIONER OF INTERNAL REVENUE, Respondent	)	

DECISION

Pursuant to the determination of the Court as set forth in its T.C. Memo. Opinion 2002-211, filed August 20, 2002, it is

ORDERED and DECIDED that there is a deficiency in income tax due from the petitioner for the taxable year 1996 in the amount of $14,699.70.

That there is an accuracy-related penalty due from the petitioner for the taxable year 1996 under the provisions of I.R.C. section 6662(a) in the amount of $2,939.94.

John J. Pajak
Special Trial Judge

Entered: AUG. 29, 2002

UNITED STATES TAX COURT

Washington, DC 20217

DONNIE F. SCHROEDER,	)	
	)	
Petitioner	)	Docket No. 5443-00
v.	)	
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
	)	
Respondent	)	

DECISION

Pursuant to the determination of the Court as set forth in its T.C. Memo. Opinion 2002-211, filed August 20, 2002, it is

ORDERED and DECIDED that there is a deficiency in income tax due from the petitioner for the taxable year 1995 in the amount of $5,479.

That there is an addition to tax due from the petitioner for the taxable year 1995 under the provisions of I.R.C. section 6651(a)(1) in the amount of $194.75.

That there is an accuracy-related penalty due from the petitioner for the taxable year 1995 under the provisions of I.R.C. section 6662(a) in the amount of $1,095.80.

John J. Pajak
Special Trial Judge

Entered: AUG. 29, 2002

T.C. Memo. 2002-211

UNITED STATES TAX COURT

DONNIE F. SCHROEDER, Petitioner v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket Nos. 7704-99, 5443-00. Filed August 20, 2002

Donnie F. Schroeder, pro se.

Paul K. Voelker, for respondent.

MEMORANDUM OPINION

PAJAK, Special Trial Judge: In these consolidated cases, respondent determined the following deficiencies, addition to tax, and penalties in petitioner's Federal income taxes:

Year	Deficiency	Addition to tax Sec. 6651(a)(1)	Accuracy-related penalty Sec. 6662(a)
1995	$5,479.00	$194.75	$1,095.80
1996	$1,168.70	-0-	$ 233.74

Unless otherwise indicated, section references are to the Internal Revenue Code in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and

Procedure.

In an amendment to anser with respect to petitioner's 1996 taxable year, respondent asserted an increased tax deficiency of $13,531 and accuracy-related penalty of $2,706.20. This results in a total deficiency of $14,699.70 and an accuracy-related penalty of $2,939.94 for petitioner's 1996 taxable year.

After deemed concessions by petitioner, the issues the Court must decide are: (1) Whether petitioner had unreported gross income in 1996; and (2) whether petitioner is liable for the accuracy-related penalty under section 6662(a) with respect to the 1996 taxable year.

Some of the facts have been stipulated and are so found. Petitioner resided in Elverta, California, at the time he filed his petitions.

We first review petitioner's 1995 taxable year. Petitioner filed a Form 1040, U.S. Individual Income Tax Return, for the 1995 taxable year. On his 1995 return,

petitioner reported "wages, salaries, tips, etc." of zero. Petitioner also reported adjusted gross income and total tax of zero. In a two-page document attached to his 1995 return, petitioner stated in part:

> It should also be noted that I had "zero" income according to the Supreme Court's definition of income (See note#1), since in Merchant's Loan & Trust Co. v. Smietanka, 225 U.S. 509, (at pages 518&519) that Court held that "The word (income) must be given the same meaning in all of the income tax acts of Congress that was given to it in the Corporation Excise Tax Act (1909). "Therefore, since I had no earnings in any year that would have been taxable under the Corporation Excise Tax Act of 1909 as "income" I can only swear to having "zero" income in 1995.* * *

Respondent issued a notice of deficiency for the 1995 taxable year and petitioner filed a petition with this Court. On August 14, 2000, this Court ordered that, with the exception of an issue relating to the period of limitations, petitioner was deemed to have conceded any issue that could arise from any of the determinations in the notice of deficiency for the 1995 taxable year.

At trial, the Court ruled that the notice of deficiency for

the 1995 taxable year was issued timely for the reasons set forth below. Petitioner had averred generally that the notice of deficiency was not issued within the 3-year period set forth in section 6501(a). Even if we take the filing date to be April 15, 1996, as petitioner claims, rather than the received date of March 12, 1997, the notice of deficiency was issued on May 10, 2000, well within the 6-year period which is applicable when there is an omission from gross income of mor than 25 percent. Sec. 6501(e). Here, the deemed deficiency obviously resulted in an omission of more than 25 percent of gross income over the zero amount reported in petitioner's 1995 return. Therefore, the notice of deficiency was issued timely for the 1995 taxable year. Because of this Court's order as to the deemed admissions and our ruling that the notice of deficiency was timely, respondent's determinations as to the 1995 taxable year are sustained.

We turn to petitioner's 1996 taxable year. On April 15, 1997, petitioner filed his 1996 individual Federal tax

return. Petitioner reported "wages, salaries, tips, etc." of zero. Petitioner attached a two-page document to his 1996 return, which was essentially identical to the two-page document attached to his 1995 return.

In the notice of deficiency for the 1996 taxable year, respondent determined that petitioner had total unreported gross income in the amount of $9,051 from various specific sources. This included the following items: (1) Interest income in the amounts of $108 and $11 from Mather Federal Credit Union and Countrywide, respectively; (2) early distribution from an individual retirement account in the amount of $7,017 from First National Bank; (3) nonemployee compensation in the amount of $690 from Nader Afrooz; and (4) rental income in the amount of $1,225 from Coldwell Banker. Respondent adjusted petitioner's self-employment tax and allowed him a corresponding deduction.

A Form 1065, U.S. Partnership Return of Income, was timely filed for Quality Sweeping & Cleaning (Quality) for the

1996 taxable year. A Schedule K-1 was attached to Quality's 1996 return. The Schedule K-1 listed petitioner as a general partner of Quality with a 50-percent interest in profit sharing, loss sharing, and ownership of capital. The Schedule K-1 listed petitioner's distributive share of Quality's ordinary income, interest income, and section 1231 gain for the 1996 taxable year as $40,697, $1,411, and $311, respectively. The Schedule K-1 also listed petitioner's distributive share of Quality's section 179 expense deduction and other deductions as $644 and $800, respectively.

During the course of trial preparation, respondent discovered that petitioner had additional income from Quality. In the amendment to answer, respondent asserted that petitioner had the following additional amounts of unreported gross income in 1996 with respect to his partnership interest in Quality: (1) Ordinary income in the amount of $40,697; (2) section 1231 gain in the amount of $311; and (3) interest income in the amount of $1,411. With respect to petitioner's

partnership interest in Quality, respondent allowed petitioner a section 179 expense deduction and other deductions in the amounts of $644 and $800, respectively. Respondent also increased petitioner's self-employment tax and allowed a corresponding deduction. Petitioner has not specifically contested the applicability of the employment tax and related deductions, and we deem that he has conceded these issues.

We must decide whether petitioner has unreported gross income in 1996. Respondent's determinations in the notice of deficiency are presumptively correct. Rule 142(a); Welsh v. Helvering, 290 U.S. 111, 115 (1933). Respondent has the burden of proof for the increased deficiency and penalty asserted in the amendment to answer. Rule 142(a). Because petitioner failed to comply with the requirements to substantiate any item, section 7491 is not applicable except that under section 7491(c), respondent has the burden of production with respect to petitioner's liability for a penalty.

In his petition and memorandum, petitioner makes tax

protester arguments that have been repeatedly rejected by this Court and others, including the Court of Appeals for the Ninth Circuit (to which this case may be appealed), as inapplicable or without merit. Rowlee v. Commissioner, 80 T.C. 1111 (1983); McCoy v. Commissioner, 76 T.C. 1027 (1981), affd. 696 F.2d 1234 (9th Cir. 1983). We see no need to repeat these discussions here.

Section 1 imposes a tax on the taxable income of individuals. Section 63(b) defines "taxable income", as applicable to petitioner, as gross income less the standard deduction and one personal exemption. Section 61(a) defines gross income to mean "all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services * * * (4) Interest; (5) Rents; * * * (11) Pensions; * * * [and] (13) Distributive share of partnership gross income".

At trial petitioner did not dispute any of the unreported gross income amounts determined by respondent in the 1996

notice and the amendment to answer. In fact, in his Reply To Amendment To Answer and at trial, in response to questions concerning items of income, petitioner admitted he received: The nonemployee compensation in the amount of $690 from Nader Afrooz, the rental income from Coldwell Banker in the amount of $1,225, money from First Nationwide Bank, and the distribution of profits from Quality. Petitioner did not raise any argument at trial as to the assertion of respondent that petitioner had $108 interest income from Mather Federal Credit Union and $11 of interest income from Countrywide. We deem these amounts conceded.

At trial, petitioner claimed the $1,225 of rental income belonged to another individual. However, petitioner admitted he "rented the house" and someone paid him rent. Petitioner offered no corroborative testimony or documentary evidence that the rental income in fact belonged to someone else. We are not required to accept petitioner's generalized statements and decline to do so here without further supporting evidence.

Giger v. Commissioner, 440 F.2d 688 (9th Cir. 1971), affg. T.C. Memo. 1969-159; Tokarski v. Commissioner, 87 T.C. 74, 77 (1986). We are not required to accept the self-serving statements of petitioner as the truth.

On this record, we hold that petitioner had unreported items of gross income in the taxable year 1996 as determined by respondent. Accordingly, we sustain respondent's determination of petitioner's income tax deficiency with respect to the 1996 taxable year.

Finally, we must decide whether petitioner is liable for the section 6662(a) accuracy-related penalty for the 1996 taxable year. Taxpayers are liable for an accuracy-related penalty in the amount of 20 percent of the portion of an underpayment of tax attributable to any substantial understatement of income tax. Sec. 6662(a) and (b) (2). A "substantial understatement" is an understatement for the taxable year exceeding the greater of 10 percent of the proper tax or $5,000. Sec. 6662(d) (1) (A). No penalty will be

imposed with respect to any portion of any underpayment if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion. Sec. 6664(c). This determination is based on all the facts and circumstances. Sec. 1.6664-4(b) (1), Income Tax Regs.

As mentioned, section 7491(c) imposes on respondent the burden of production of evidence that the section 6662(a) penalty is appropriate, but respondent need not produce evidence regarding reasonable cause. Higbee v. Commissioner, 116 T.C. 438, 446-447 (2001).

Petitioner substantially understated his income tax liability for the 1996 taxable year because he reported a income tax liability of zero. Respondent provided the amount and sources of the unreported gross income determined in the 1996 notice of deficiency and the amendment to answer. Petitioner's income tax liability substantially exceeds the amount shown on his 1996 return. On the record before the

Court, we find that respondent has satisfied the burden of production with respect to the accuracy-related penalty under section 6662(a). Petitioner presented no evidence indicating reasonable cause for the understated income. Accordingly, we sustain the imposition of the accuracy-related penalty.

Decisions will be entered for respondent.